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DIVISION XIV

CERTIORARI

Rule 1.1401 Certiorari petition. A party may commence a certiorari action when authorized by statute or when the party claims an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally.

Rule 1.1402 Procedure.

1.1402(1) Title. The petition shall be captioned in the name of the petitioner as plaintiff, against the inferior tribunal, board or officer as defendant.

1.1402(2) Nature of proceeding. The action shall be by ordinary proceedings, so far as applicable.

1.1402(3) Time for filing. The petition must be filed within 30 days from the time the tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. An extension of such time, however, may be allowed by the reviewing court upon a showing that failure to file the petition within the time provided was due to a failure of the tribunal, board or officer to notify the petitioner of the challenged decision. Any motion for extension of time shall be filed with the clerk of the court in which the writ of certiorari is sought within 90 days of the challenged decision. The motion and any resistance may be supported by copies of relevant portions of the record of the proceedings being challenged, and by affidavits, and no other form of evidence will be received.

Rule 1.1403 Other remedies. The writ shall not be denied or annulled because the plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or the legality of the challenged acts, unless otherwise provided by statute.

Rule 1.1404 The writ. A district court judge may order the issuance of a writ to an inferior tribunal, board, or officer, or to a judicial magistrate. The writ shall be issued by the clerk of the court where the petition is filed, under its seal. It shall command the defendant to certify to that court, at a specified time and place, a transcript of so much of the defendant's records and proceedings as are pertinent to the petition, together with the facts of the case, described with reasonable certainty.

Rule 1.1405 Stay, bond. The court may stay the original proceedings even though no stay is requested. If the court grants the plaintiff's request for a stay, the stay may be conditioned upon the plaintiff's filing of a bond with penalty and conditions, including security for costs, as prescribed by the court and with sureties approved by the court or the clerk.

Rule 1.1406 Notice of issuing writ. The court may issue the writ without notice upon the filing of the petition, or it may fix a time and place for hearing and prescribe reasonable notice to the defendant. If the petition is filed before a final order or decree in the original proceeding or if the plaintiff seeks a stay, the court shall fix a time and place for hearing and prescribe reasonable notice to the defendant before issuing the writ. Any hearing shall be confined to the

1 sufficiency of the petition, what records or proceedings shall be certified, and
2 the terms of any bond to be given.

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4 **Rule 1.1407 Service of writ.** The writ shall be served by a sheriff or deputy
5 sheriff, unless the defendant accepts service of the writ. If the writ is issued to
6 a magistrate, service shall be on the magistrate or clerk of that court; if issued
7 to a board or other tribunal, it shall be served on its secretary, clerk, or any
8 member. Service shall be by delivery of the original writ. A copy, with return
9 of service, shall be returned to the clerk of the court issuing the writ.

10
11 **Rule 1.1408 Return to writ, by whom.** If the writ is issued to a magistrate,
12 the return shall be made and signed by the magistrate whose decision is
13 challenged, if practicable, otherwise by the clerk of that court. If issued to an
14 officer, the officer shall make and sign the return. If issued to a board or
15 tribunal, the return shall be made and signed by its presiding officer, clerk, or
16 secretary.

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18 **Rule 1.1409 Defective return.** If the return is defective, the court issuing
19 the writ, on the court's own motion or that of any party, may order a further
20 return. The court may compel obedience to the writ or to such order by
21 attachment or citation for contempt.

22
23 **Rule 1.1410 Hearing.** When full return has been made, the court shall fix a
24 time and place for hearing. In addition to the record made by the return, the
25 court may receive any transcript or recording of the original proceeding and
26 such other oral or written evidence explaining the matters contained in the
27 return. Unless otherwise specially provided by statute, such transcript,
28 recording, or additional evidence shall be considered only to determine the
29 legality of the proceedings or the sufficiency of the evidence before the original
30 tribunal, board, officer, or magistrate.

31
32 **Rule 1.1411 Judgment.** Unless otherwise provided by statute, the judgment
33 on certiorari shall be limited to annulling the writ or to sustaining it, in whole
34 or in part, to the extent the proceedings below were illegal or in excess of
35 jurisdiction. The judgment shall prescribe the manner in which either party
36 may proceed, and shall not substitute a different or amended decree or order
37 for that being reviewed.

38
39 **Rule 1.1412 Appeal.** An appeal from an order or judgment of the district
40 court in a certiorari proceeding is governed by the rules of appellate procedure
41 applicable to appeals in ordinary civil actions. An appeal is discretionary when
42 the order or judgment sought to be reviewed is itself a discretionary review of
43 another tribunal, board, officer, or magistrate.